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Farm Transfer Trust (*Victorian land only*)

► Trust can receive farming land free of GST & Victorian duty

► Small business CGT concessions may also apply

► **Key definitions**

"Primary production" land – *Land Tax Act 2005*

"Relative" – *Duties Act 2000*

► **Only possible capital beneficiaries** for land transferred free of duty are relatives & charities

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Key Definitions – Farm Transfer Trusts (Extracts from Victorian legislation)

For the purposes of the farm transfer trust exemption, "primary production" is defined by section 64 of the Victorian *Land Tax Act 2005*. It means:

• cultivating land for the purpose of selling the produce of such cultivation;

• maintaining animals or poultry for the purpose of selling them or their natural increase or bodily produce;

• keeping bees for the purpose of selling their honey;

• commercial fishing, including the preparation for such fishing or the storage and preservation of fish or fishing gear; or

• cultivating or propagating for sale, plants, seedlings, mushrooms or orchids.

Whether land is primary production land will also depend on its location, with different rules applying where the land is outside greater Melbourne for land tax purposes, inside that area and outside an urban zone and inside that area and within an urban zone – see sections 65 to 67 of the *Land Tax Act 2005*.

A "relative", in relation to a natural person, means:

• a child or remoter lineal descendant (eg grandchild or great grandchild) of the person, or of the partner of the person transferring the farming land;

• a parent or remoter lineal ancestor of the person or of the partner of the person;

• a brother or a sister of the person or of the partner of the person;

• the partner of the person or a partner of any person referred to above.

For the purposes of the family farm exemption, a partner includes a person's living domestic partner and a deceased domestic partner. "Capital" means capital for accounting, rather than income tax purposes.

A child includes a legally adopted child. The stepchild or step-grandchild must be a direct lineal descendant of the spouse of the transferor, so not all stepchildren or step-grandchildren will be relatives under this definition.

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Farm Transfer Trust – s56 Requirements

► To satisfy **Victorian** legislation (**s56**)

- ► Transferor must be individual or company
- ► Farm transfer trust's terms must ensure relatives or charities receive primary production land or proceeds when land is distributed/sold
- ►"Relative" includes child/stepchild, other descendants, sibling & parent of transferor or transferor's living or deceased domestic partner

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Duties Act 2000 (Vic) – S56 Exemption – Primary Production Land Transfers

"(1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property if the Commissioner is satisfied that:

(a) the dutiable property is an estate in fee simple in land referred to in section 65, 66 or 67 of the *Land Tax Act 2005*; and

(b) the transferor is a person referred to in sub-section (2); and

(c) the transferee is a person referred to in sub-section (3); and… .

(2) The transferor must be:

(a) a natural person; or

(b) a trustee for a natural person; or

(c) a company all the shares in which are owned by natural persons who are relatives of each other; or….

[*in paragraph (d), there is a similar restriction on trusts, excluding most trusts*]

(3) The transferee must be:

(a) a relative of a natural person referred to in sub-section (2); or

(b) a trustee under a fixed trust, the beneficiaries of which are limited to

(i) a present or future relative of a natural person referred to in sub-section (2); or

(ii) a charitable institution; or…..

(c) a trustee under a discretionary trust the terms of which do not allow the distribution of the whole or any part of the capital of the trust that comprises land referred to in section 65, 66 or 67 of the *Land Tax Act 2005* to any person or body other than a person or body referred to in paragraph (b); or

(d) a natural person referred to in sub-section (2)(c)."

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